



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Laurence E. Gold, Esq.
Lichtman, Trister & Ross, PLLC
1666 Connecticut Avenue, N.W., Fifth Floor
Washington, D.C. 20009

APR 26 2010

RE: MUR 6021
America Coming Together

Dear Mr. Gold:

On September 26, 2008, the Federal Election Commission notified your client, America Coming Together, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On October 20, 2008, the Commission notified your clients of a supplement to the initial complaint, and a copy of the supplement was forwarded to your clients at that time. On January 12, 2010, the Commission notified your clients of additional information from the complainant pertaining to the allegations in the complaint, and a copy of this additional information was forwarded to your clients at that time. On April 13, 2010, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe America Coming Together violated 2 U.S.C. § 433. The Commission further found that there is no reason to believe America Coming Together violated 2 U.S.C. §§ 434(b) and 441a(a)(1)(A) with respect to the allegation that it made an undisclosed excessive in-kind contribution. The Commission has also determined to exercise its prosecutorial discretion and dismiss the allegation that America Coming Together violated 434(b) by failing to report ballot expenditures. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: America Coming Together

MUR 6021

I. INTRODUCTION

The complaint in this matter alleges that America Coming Together (“ACT”) violated the Federal Election Campaign Act of 1971, as amended (“the Act”) in two ways. First, it alleges that America Coming Together (“ACT”) made undisclosed excessive contributions and expenditures in connection with their coordinated efforts to deny Nader and Peter Miguel Camejo (“Nader-Camejo”) ballot access in Oregon, in violation of 2 U.S.C. §§ 434(b) and 441a(1)(A). Second, the complaint alleges that ACT is a “political committee” that failed to register and report with the Commission in connection with activities during 2004 to benefit the Kerry Committee or oppose the Nader-Camejo campaign, in violation of 2 U.S.C. §§ 433 and 434(b). As discussed below, the allegation that ACT coordinated efforts to deny Nader-Camejo ballot access in Oregon is insufficient to warrant an investigation. Accordingly, the Commission has determined to find no reason to believe that ACT violated 2 U.S.C. §§ 434(b) and 441a(1)(A). The Commission has also determined to exercise its prosecutorial discretion and dismiss the other allegation pertaining to ACT’s reporting of ballot access expenditures because ACT is no longer a functioning organization, and find no reason to believe that it failed to register in violation of 2 U.S.C. § 433 because it was, in fact, registered as a political committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Allegations Relating to the Activities of ACT in Oregon

1. Facts

The complaint alleges that ACT planned and executed an effort to prevent Nader-Camejo from being placed on the ballot in the State of Oregon, resulting in undisclosed excessive contributions and expenditures. Complaint at 93. In support, the complaint refers to an August 16, 2004, blog entry from ACT employee William Gillis, who stated that ACT shared the Portland, Oregon, office space with political campaign staff from SEIU, and that he witnessed “higher echelons of both staffs” organize “a concerted effort among the ACT/SEIU staff to attack the Nader petition drive,” by signing petitions where petitioners were required to sign, and then scratching out the signatures, thereby invalidating the entire petition. Complaint at 74.

In response to these allegations, ACT states that the complaint fails to explain how its alleged activities in Oregon constituted a contribution, as it does not allege any contacts between ACT and either Kerry for President 2004, Inc. and Kerry-Edwards 2004, Inc. (collectively “the Kerry Committee”) or the Democratic National Committee (“DNC”), or any DNC, Kerry Committee, or Oregon Democratic Party involvement in the alleged ACT/SEIU joint effort to prevent ballot access for Nader-Camejo. ACT Response at 7. Further, ACT states that while Count 2 of the complaint alleges various financial transactions between SEIU and DNC, there is no allegation that any of these transactions or political activities were tied to this particular allegation, or that ACT had any contacts with the DNC, the Kerry Committee, or the Oregon Democratic Party. *Id.* at 8.

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2. Analysis

In 2004, the Act limited contributions by political committees to any candidate or his or her authorized political committee with respect to any election for federal office, which, in the aggregate, exceeded \$5,000. 2 U.S.C. § 441a(2)(A) (2004). With respect to political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, the Act also limited contributions by political committees to \$15,000 per calendar year. 2 U.S.C. § 441a(2)(B).

The complaint does not allege, and the available information does not suggest, that ACT's activities in Oregon were coordinated with the Kerry Committee, the DNC, or any other entity. Indeed, the complaint's central allegation pertaining to ACT, that it shared facilities with another entity and organized "an attack" on the Nader petition drive, provides no link between such factual allegations and either the Kerry Committee or the DNC. As such, the available information does not indicate that the activities in question resulted in the making of an in-kind excessive contribution to either the Kerry Committee or the DNC.

In sum, the complaint's allegations as to ACT's activities contain insufficient supporting facts to provide a reason to believe that ACT made in-kind contributions to any political committees in connection with their alleged activities, and thus provide insufficient grounds to investigate. In addition, while the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other reasons, the age of the alleged violations would create problems of proof and raise obstacles under the five-year statute of limitations. Accordingly, the Commission has determined to find no reason to believe that America Coming Together made undisclosed excessive in-kind contributions in violation of 2 U.S.C. §§ 434(b) and 441a(1)(A).

B. Allegation that ACT Failed to Register and Disclose Its Activities

According to the complaint, ACT received contributions and made expenditures in unspecified amounts to influence a federal election, including the compensation paid to ACT staffers who participated in ballot access challenges, Complaint at 95-97. The complaint also describes ACT as a nonfederal Section 527 organization that failed to register as a political committee. *Id.* The Complaint maintains that ACT's compensation paid to its staffers participating in ballot access challenges was subject to the Act's registration and reporting requirements, with which ACT failed to comply. *Id.* In response to the complaint, ACT first disputes the allegation that it had failed to register as a political committee. Specifically, ACT maintains that the complaint misidentifies it as a nonfederal "Section 527 organization," noting that it "was (and remains) *both a federal political committee and a nonfederal 527 organization.*" ACT Response at 6 (Emphasis in original). ACT refers to the Conciliation Agreement executed by the Commission and ACT in MURs 5403 and 5466 in August 2007, which noted that "ACT was established in July 2003 with federal and nonfederal accounts pursuant to 11 C.F.R. § 102.5." *See* MUR 5403 and 5466 Conciliation Agreement at Paragraph 1, page 2. ACT also states that those accounts are registered with, and report to, the Commission and the Internal Revenue Service ("IRS"). ACT Response at 6. The FEC disclosure database shows that ACT is in fact a registered political committee, and has been so since 2003. Therefore, the allegation that ACT failed to register as a political committee is incorrect. Accordingly, the Commission has determined to find no reason to believe that America Coming Together failed to register as a political committee in violation of 2 U.S.C. § 433.

With regard to whether ACT allegedly paid staffers for activities directed toward denying Nader-Camejo ballot access and whether such payments constituted expenditures under the act,

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1 the Commission has determined not to proceed further. ACT is essentially a defunct
2 organization. In response to the complaint, ACT stated that it “no longer exists as a functioning
3 organization” and has suspended ongoing active operations since 2005, with plans to terminate
4 its affairs upon completion of this matter. ACT Response at 12. The Commission has
5 previously decided to take no further action where the entity was essentially defunct, with
6 minimal or no assets, and had been inactive for several years with little prospect of resuming
7 activity. *See* MUR 5534 (Business Alaska). Moreover, ACT already paid a substantial civil
8 penalty for violations during the 2004 election cycle in MUR 5466. In addition, while the
9 activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other
10 reasons, the age of the alleged violations would create problems of proof and raise obstacles
11 under the five-year statute of limitations. Under similar circumstances here, the Commission has
12 determined to exercise its prosecutorial discretion and dismiss the allegation that America
13 Coming Together violated section 434(b). *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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